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12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
San Jose Division

14 UNITED STATES OF AMERICA,
15 Plaintiff,

16 v.

17
18 W3 INNOVATIONS, LLC,
a limited liability company,
19 also doing business as
Broken Thumbs Apps, and
20 JUSTIN MAPLES,
21 individually and as an officer of
W3 INNOVATIONS, LLC,
22 Defendants.

CV11-03958

PSG

COMPLAINT FOR CIVIL PENALTIES,
PERMANENT INJUNCTION, AND
OTHER RELIEF

24 Plaintiff, the United States of America, acting upon notification and authorization to the
25 Attorney General by the Federal Trade Commission ("FTC" or "Commission"), for its
26 Complaint alleges:

27 1. Plaintiff brings this action under Sections 1303(c) and 1306(d) of the Children's
28 Online Privacy Protection Act of 1998 ("COPPA"), 15 U.S.C. §§ 6501-6506, 6502(c) and
6505(d), and Sections 5(a)(1), 5(m)(1)(A), 13(b), and 16(a) of the Federal Trade Commission

1 Act ("FTC Act"), 15 U.S.C. §§ 41-58, 45(a)(1), 45(m)(1)(A), 53(b), and 56(a), to obtain
2 monetary civil penalties, a permanent injunction, and other equitable relief for Defendants'
3 violations of the Commission's Children's Online Privacy Protection Rule ("Rule" or "COPPA
4 Rule"), 16 C.F.R. Part 312, and Section 5 of the FTC Act, 15 U.S.C. § 45.

5 JURISDICTION AND VENUE

6 2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a),
7 1345, and 1355, and under 15 U.S.C. §§ 45(m)(1)(A), 53(b), 56(a), and 57b.

8 3. Venue is proper in the Northern District of California under 15 U.S.C. § 53(b)
9 and 28 U.S.C. §§ 1391(b)-(c) and 1395(a).

10 INTRADISTRICT ASSIGNMENT

11 4. Defendant W3 Innovations, LLC has its primary place of business in the County
12 of Santa Clara.

13 DEFINITIONS

14 5. For purposes of this Complaint, the terms "child," "collects," "collection,"
15 "Commission," "disclosure," "Internet," "operator," "parent," "personal information," "third
16 party," "verifiable consent," and "website or online service directed to children," are defined as
17 those terms are defined in Section 312.2 of the Rule, 16 C.F.R. § 312.2.

18 THE CHILDREN'S ONLINE PRIVACY PROTECTION RULE

19 6. Congress enacted COPPA in 1998 to protect the safety and privacy of children
20 online by prohibiting the unauthorized or unnecessary collection of children's personal
21 information online by operators of Internet websites or online services. COPPA directed the
22 Federal Trade Commission to promulgate a rule implementing COPPA. The Commission
23 promulgated the Children's Online Privacy Protection Rule, 16 C.F.R. Part 312, on November 3,
24 1999 under Section 1303(b) of COPPA, 15 U.S.C. § 6502(b), and Section 553 of the
25 Administrative Procedure Act, 5 U.S.C. § 553. The Rule went into effect on April 21, 2000.

26 7. The Rule applies to any operator of a commercial website or online service, or
27 portion thereof, directed to children that collects, uses, and/or discloses personal information
28 from children, and to any operator of a commercial website or online service that has actual

1 knowledge that it collects, uses, and/or discloses personal information from children. Among
2 other things, the Rule requires a subject website operator to meet specific requirements prior to
3 collecting online, using, or disclosing personal information from children, including, but not
4 limited to:

- 5 a. Posting a privacy policy on its website or online service providing clear,
6 understandable, and complete notice of its information practices,
7 including what information the website operator collects from children
8 online, how it uses such information, its disclosure practices for such
9 information, and other specific disclosures set forth in the Rule;
- 10 b. Providing clear, understandable, and complete notice of its information
11 practices, including specific disclosures, directly to parents when required
12 by the Rule;
- 13 c. Obtaining verifiable parental consent prior to collecting, using, and/or
14 disclosing personal information from children;
- 15 d. Giving parents the option to consent to the collection and internal use of
16 their children's personal information without consenting to the disclosure
17 of that information to third parties;
- 18 e. Providing a reasonable means for parents to review the personal
19 information collected from their children and to refuse to permit its further
20 use or maintenance;
- 21 f. Not conditioning children's participation in an activity upon the children
22 disclosing more personal information than is reasonably necessary to
23 participate in that activity; and,
- 24 g. Establishing and maintaining reasonable procedures to protect the
25 confidentiality, security, and integrity of personal information collected
26 from children.

27 8. Pursuant to Section 1303(c) of COPPA, 15 U.S.C. § 6502(c), and Section
28 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation of the Rule constitutes an unfair or

1 deceptive act or practice in or affecting commerce, in violation of Section 5(a)(1) of the FTC
2 Act, 15 U.S.C. § 45(a)(1).

3 **DEFENDANTS**

4 9. Defendant W3 Innovations, LLC (“W3”), also doing business as Broken Thumbs
5 Apps, is a California limited liability company with its principal office or place of business
6 located at 10390 Mann Drive, Cupertino, California 95014. W3 develops, markets, distributes,
7 or sells software applications for mobile devices (“apps”) to consumers throughout the United
8 States and provides online services to users of its apps. W3 transacts or has transacted business
9 in the Northern District of California.

10 10. Defendant Justin Maples is the President and 56% owner of W3. At all times
11 material to this Complaint, acting alone or in concert with others, he has formulated, directed,
12 controlled, had the authority to control, or participated in the acts and practices of W3, including
13 the acts and practices set forth in this Complaint. Defendant Justin Maples resides in this district
14 and, in connection with the matters alleged herein, transacts or has transacted business in this
15 district.

16 **COMMERCE**

17 11. The acts and practices of Defendants alleged in this Complaint have been in or
18 affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

19 **DEFENDANTS’ COURSE OF CONDUCT**

20 12. Since 2009, Defendants have offered for download from Apple Inc.’s App Store
21 approximately forty apps, for the iPhone and the iPod touch, that allow users to play games,
22 share information online, and engage in other activities. Several of Defendants’ apps, including
23 the Emily’s Girl World app, Emily’s Dress Up app, Emily’s Dress Up & Shop app, and Emily’s
24 Runway High Fashion app, are directed to children. (*See* Exhibit A, copies of each app’s main
25 screen.) These apps send and/or receive information over the Internet, and thus are online
26 services directed to children pursuant to COPPA.

27 13. Shortly after the February 2010 release of the Emily’s Girl World app, a posting
28 to Defendants’ www.brokenthumbsapps.com website described the app as “a fun story-telling

1 app with charming graphics . . . which we thought that younger girls and nostalgic adults in
2 particular might enjoy. Based on feedback from users, it seems that the core of v1.0 hit our
3 target market” The app, which was listed by Defendants in the Games – Kids section of
4 Apple Inc.’s App Store, includes six children’s games. Cootie Catcher and M.A.S.H. (Mansion,
5 Apartment, Shack, House) are classic fortune-telling games, traditionally played on paper, that
6 are popular with elementary school girls. (See Exhibits B and C). The Lemon game asks a user
7 to fill in up to five names, cities, body parts, and things one can do with a lemon and then uses
8 this information to “squeeze out” a story. (See Exhibit D). The Love game predicts “the
9 likelihood that you and your crush will have true love” simply based upon the two names
10 entered. (See Exhibit E). The Compatibility game asks a user to fill in two names, answer one
11 to five questions about each person, and dress and color avatars of the two people, and it then
12 predicts their compatibility percentage. (See Exhibit F). The Truth or Dare game provides
13 random “truth” questions and “dares” for the classic childhood game. (See Exhibit G). The app
14 also includes “a journal to keep track of your stories as well as anything you want (plus a lock to
15 keep it private)” and “a charming sticker album to display all the cute stickers you earn just by
16 playing Emily’s Girl World.” (See Exhibit H). There have been over 32,000 downloads of the
17 Emily’s Girl World app.

18 14. The Emily’s Dress Up app, Emily’s Dress Up & Shop app, and Emily’s Runway
19 High Fashion app (“the Emily Dress-up apps”), released between July 2010 and January 2011,
20 were listed by Defendants in the Games – Kids section of Apple Inc.’s App Store. The three
21 Emily Dress-up apps feature dress-up games that allow a user to create virtual models, design
22 outfits from assortments of clothes, shoes, and accessories, and share the outfits with friends.
23 (See Exhibit I, from the Emily’s Dress Up app). They also share a common online “Emily’s
24 Dress Up” blog. The Emily’s Dress Up & Shop app and Emily’s Runway High Fashion app
25 have advertised and promoted the Emily’s Girl World app. There have been over 27,000
26 downloads of the Emily Dress-up apps.

27 15. The Emily’s Girl World app features “the world famous Emily’s Blog (with new
28 blog post [sic] Monday through Friday).” The Emily’s Girl World blog, which is available

1 online only through the Emily's Girl World app, invites a user to post "shout-outs" to friends and
2 family members, ask Emily's advice, share embarrassing "blush" stories, submit art and pet
3 photographs, and send in inspirational quotes. (See Exhibit J). The blog contains hyperlinks
4 that, when touched, format an email from the user to "Emily" for submission (e.g., "if you have
5 an inspirational quote you'd like to share with everybody, please touch here"). Defendants post
6 the user's submissions to the blog from the incoming emails, but do not post email addresses.

7 16. The "Emily's Dress Up" blog invites a user to share models and outfits designed.
8 (See Exhibit K). The submission process is the same as for the Emily's Blog.

9 17. The Emily's Girl World app and the Emily's Dress Up & Shop app also
10 encourage a user to send emails to "Emily" through the user's mobile device. For example, in
11 describing the Emily's Girl World app, Defendants say, "Best of all, as if all of that wasn't
12 enough, you can also send an email directly to Emily to say hi! As other fans will tell you,
13 Emily listens and reads all of your emails, feedback and suggestions . . . , so please send her a
14 message!" When a user clicks on "email emily" on the app's home screen, the app formats an
15 email from the user to Emily. (See Exhibit L).

16 18. Including submissions to the blogs, Defendants have collected and permanently
17 maintained over 30,000 email addresses from users of the Emily's Girl World app and the Emily
18 Dress-up apps.

19 19. The Emily's Girl World blog and the Emily's Dress Up blog also provide a user
20 the opportunity to submit comments on the blog entries. At the bottom of each blog entry is a
21 link to a comments area, and at the bottom of each comments area is a form to "Leave a Reply."
22 (See Exhibit M). The comment form asks for user's name and email address, which are
23 required fields. Although not required to do so, a user is permitted to provide a full name, which
24 is then publicly posted to the blog comments area together with the comment. Defendants'
25 comment form enables a user to post her comments directly to the blog. These blog comments
26 areas function as online message boards through which a user is able to freely post information,
27 including personal information.

28 20. In addition to the collection and maintenance of over 30,000 emails, containing

1 email addresses, Defendants have collected, maintained, and/or disclosed personal information
2 from over 300 Emily's Girl World app users and approximately 290 Emily's Dress Up app users
3 who have registered to submit comments.

4 21. The subject matter, visual content, and language of the Emily's Girl World app
5 and the Emily Dress-up apps are directed to children under the age of 13.

6 22. Defendants collect or have collected personal information from children through
7 the online operation of the Emily's Girl World app and the Emily Dress-up apps and thus are
8 "operators" as defined in the Rule.

9 23. Defendants have failed to maintain or link to an online notice of Defendants'
10 information collection, use, and disclosure practices for the Emily's Girl World app and the
11 Emily Dress-up apps.

12 24. Defendants have not provided direct notice to parents of their practices regarding
13 the collection, use, and/or disclosure of children's personal information and other disclosures
14 required by the Rule.

15 25. Defendants have not obtained verifiable consent from parents prior to collecting,
16 using, or disclosing children's personal information.

17 **COUNT I**

18 **DEFENDANTS' VIOLATIONS OF THE CHILDREN'S** 19 **ONLINE PRIVACY PROTECTION RULE**

20 26. Defendants operate online services directed to children, including through their
21 Emily's Girl World app and the Emily Dress-up apps, which collect personal information from
22 children under age 13.

23 27. In numerous instances, in connection with the acts and practices described above,
24 Defendants collected, maintained, and/or disclosed personal information from children in
25 violation of the Rule by:

- 26 a. Failing to provide notice on Defendants' online services of what
27 information they collect online from children, how they use such
28 information, their disclosure practices, and all other required content, in

1 violation of Section 312.4(b) of the Rule, 16 C.F.R. § 312.4(b);

2 b. Failing to provide direct notice to parents of what information Defendants
3 collect online from children, how they use such information, their
4 disclosure practices, notice of any material change in the collection, use,
5 and/or disclosure practices, and all other required content, in violation of
6 Section 312.4(c) of the Rule, 16 C.F.R. § 312.4(c); and,

7 c. Failing to obtain verifiable parental consent before any collection of
8 personal information from children, in violation of Section 312.5 of the
9 Rule, 16 C.F.R. § 312.5(a)(1).

10 Therefore, Defendants have violated the Children's Online Privacy Protection Rule, 16 C.F.R.
11 Part 312, and Section 5(a)(1) of the FTC Act, 15 U.S.C. § 45(a)(1).

12 **THE COURT'S POWER TO GRANT RELIEF**

13 28. Defendants violated the Rule as described above with the knowledge required by
14 Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A).

15 29. Each collection, use, or disclosure of a child's personal information in which
16 Defendants violated the Rule in one or more of the ways described above constitutes a separate
17 violation for which Plaintiff seeks monetary civil penalties.

18 30. Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A), as modified by
19 Section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, and
20 Section 1.98(d) of the FTC's Rules of Practice, 16 C.F.R. § 1.98(d), authorizes this Court to
21 award monetary civil penalties of not more than \$16,000 for each such violation of the Rule on
22 or after February 10, 2009.

23 31. Under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), this Court is authorized
24 to issue a permanent injunction against Defendants' violations of the FTC Act, as well as such
25 ancillary relief as may be just and proper.

26 **PRAYER**

27 WHEREFORE, plaintiff United States of America, pursuant to Sections 5(a)(1),
28 5(m)(1)(A), 13(b) and 16(a) of the FTC Act, 15 U.S.C. §§ 45(a)(1), 45(m)(1)(A), 53(b) and

1 56(a), and the Court's own equitable powers, requests that the Court:

- 2 (1) Enter a permanent injunction to prevent future violations of the FTC Act and the
3 COPPA Rule by Defendants;
- 4 (2) Award Plaintiff monetary civil penalties from Defendants for each violation of
5 the Rule alleged in this Complaint; and
- 6 (3) Award such other and additional relief as the Court may determine to be just and
7 proper.

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